ESTTA Tracking number:

ESTTA110076

Filing date:

11/16/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91172816
Party	Plaintiff eBay Inc. eBay Inc.
Correspondence Address	Kristin K. Manley Cooley Godward LLP 101 California Street, 5th Floor San Francisco, CA 94111-5800 UNITED STATES trademarks@cooley.com, kmanley@cooley.com, jrosenthal@cooley.com
Submission	Motion for Default Judgment
Filer's Name	Kristin K. Manley
Filer's e-mail	trademarks@cooley.com,kmanley@cooley.com,youngml@cooley.com
Signature	/Kristin K. Manley/
Date	11/16/2006
Attachments	91172816 Motion for Default.pdf (19 pages)(154691 bytes)

Certificate of Transmission				
I hereby certify that this correspondence is being transmitted via the Electronic System for Trademark Trials and Appeals (ESTTA).				
11/16/04 (Name				

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 78/636,498 For the Trademark FONEBAY Published in the Official Gazette on March 14, 2006

EBAY INC.,)
Opposer,)
v.) Opposition No. 91172816
FONEMINE INC.)))
Applicant.)))

OPPOSER'S MOTION FOR DEFAULT JUDGMENT

I. Introduction

Pursuant to 37 C.F.R. § 2.106(a) and Fed.R.Civ.P. 55, eBay Inc. ("eBay") moves for default judgment against fonemine, Inc. ("Applicant") based on Applicant's failure to timely Answer eBay's Notice of Opposition.

On September 11, 2006, eBay timely filed its Notice of Opposition against Serial No. 78/636,498. On that same day, the Board mailed a notice to Applicant's counsel informing him that an Answer to the Notice of Opposition was due forty (40) days after the mailing of the notice. Attached hereto as Exhibit A is a true and correct copy of the Board's notice. Pursuant to Trademark Rule 2.196, Applicant's deadline to Answer eBay's Notice of Opposition was October 21, 2006, which fell on a Saturday. Consequently, Applicant was granted an additional two days, or until October 23, 2006, to file its Answer.

On October 26, 2006, several days after its Answer was actually due, Applicant filed an Answer to eBay's Notice of Opposition via the Electronic System for Trademark Trial and Appeals. Attached hereto as Exhibits B and C are true and correct copies of the Answer, including the October 26, 2006 proof of service, and the Trademark Trial and Appeal Board database record for Opposition 91172816, reflecting the Board's receipt of the Answer on October 26, 2006.

Because Applicant's Answer was untimely, judgment by default should be entered against Serial No. 78/636,498.

II. Grounds for Default Judgment

Trademark Rule 2.106(a) provides that "[i]f no answer is filed within the time set, the petition may be decided as in case of default." 37 C.F.R. §2.106(a). As in a cancellation proceeding, the applicant in an opposition proceeding "that fails to file a timely answer is 'in default' once the due date for the answer has passed." *Paolo's Associates Ltd. Partnership v. Paolo Bodo*, 21 U.S.P.Q.2d 1899, 1901 (Comm'r Pat. 1990). "[I]t is well settled that the client and the attorney share a duty to remain diligent in prosecuting or defending the client's case." *CTRL Systems, Inc. v. Ultraphonics of North America Inc.*, 52 U.S.P.Q.2d 1300, 1302 (T.T.A.B.

1999). Because Applicant failed to timely file an Answer to eBay's Notice of Opposition,

default judgment should be entered against Applicant.

An opposer's service of a Motion of Default Judgment upon an applicant for failure to

timely file an answer may serve as a substitute for the Board's issuance of a notice of default.

T.B.M.P. § 312.01. Accordingly, once an applicant in an opposition proceeding has been

properly notified of the default, the applicant must prove good cause for its untimely filing.

Fed.R.Civ.P. 55(c); see also, DeLorme Publishing Co. v. Eartha's Inc., 60 U.S.P.Q.2d 1222,

1223 (T.T.A.B. 2000).

III. Conclusion

In light of the foregoing, eBay respectfully requests that default judgment be entered

against Applicant.

Respectfully submitted,

COOLEY GODWARD KRONISH LLP

Date: November 16, 2006

Kristin K. Manley

Attorneys for eBay Inc.

101 California Street, 5th Floor San Francisco, California 94111

(415) 693-2166

3

CERTIFICATE OF SERVICE

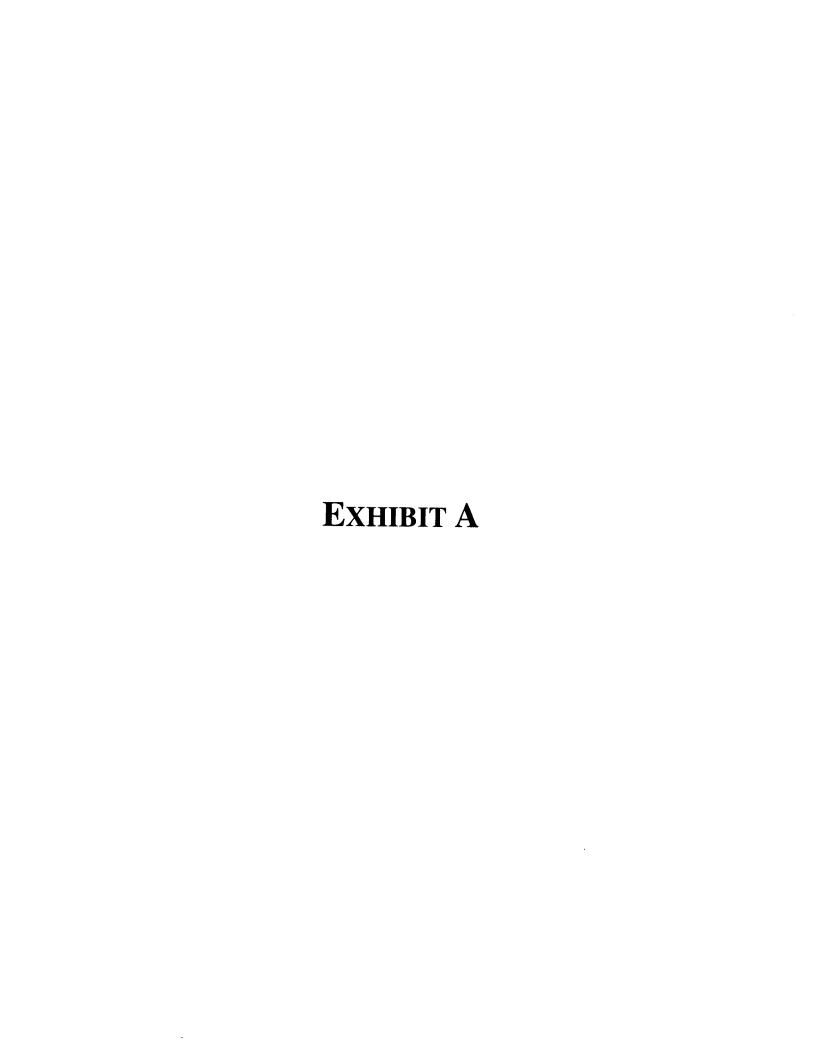
I hereby certify that the foregoing Motion for Default Judgment was sent to counsel for Applicant by United States Postal Service as First Class mail in an envelope addressed as follows on the date indicated below:

David H. Jaffer, Esq. Pillsbury Winthrop Shaw Pittman LLP 2475 Hanover Street Palo Alto, CA 94304-1114

Date: November 16, 2006

By:

4



United States Patent and Trademark Office Trademark Trial and Appeal Board P.O. Box 1451 Alexandria, VA 22313-1451

Mailed: September 11, 2006

Opposition No 91172816 Serial No. 78636498

DAVID H. JAFFER
PILLSBURY WINTHROP SHAW PITTMAN LLP
2475 HANOVER ST
PALO ALTO, CA 94304-1114
david.jaffer@pillsburylaw.com

eBay Inc.

v.

fonemine, Inc.

Kristin K. Manley Cooley Godward LLP 101 California Street, 5th Floor San Francisco, CA 94111-5800 trademarks@cooley.com, kmanley@cooley.com, jrosenthal@cooley.com

ESTTA98754

A notice of opposition to the registration sought in the aboveidentified application has been filed. The notice of opposition can be viewed and printed at http://ttabvue.uspto.gov/ttabvue/v?qs= 91172816

ANSWER IS DUE FORTY DAYS after the transmission date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance

with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: October 01, 2006

Discovery period to close: March 30, 2007

30-day testimony period for party

in position of plaintiff to close: June 28, 2007

30-day testimony period for party

in position of defendant to close: August 27, 2007

15-day rebuttal testimony period

for plaintiff to close: October 11, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the Official Gazette notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at http://www.uspto.gov. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABVue at http://ttabvue.uspto.gov.



ESTTA Tracking number:

ESTTA106474

Filing date:

10/26/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91172816
Party	Defendant fonemine, Inc. fonemine, Inc. 924 Borregas Avenue Sunnyvale, CA 94089
Correspondence Address	DAVID H. JAFFER PILLSBURY WINTHROP SHAW PITTMAN LLP 2475 HANOVER ST PALO ALTO, CA 94304-1114
Submission	Answer
Filer's Name	DAVID H. JAFFER/REG. NO. 32,243
Filer's e-mail	david.jaffer@pillsburylaw.com, judy.keeley@pillsburylaw.com
Signature	/David H. Jaffer/
Date	10/26/2006
Attachments	ANSWER78636498.pdf (8 pages)(148885 bytes)

David H. Jaffer
PILLSBURY WINTHROP SHAW PITTMAN LLP
Intellectual Property Group
P.O. Box 10500
McLean, VA 22102
david.jaffer@pillsburylaw.com

Attorneys for Applicant

IN THE UNITED STATES PATENT & TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

In the Matter of Trademark Application:

Serial Number	Mark	Class
78/636,498	FONEBAY	42
		·
EBAY, INC.		,)
Opposer) Opposition No. 91172816
v.) ANSWER TO NOTICE OF OPPOSITION
) OPPOSITION)
FONEMINE INC.		,)
Applicant))
))

fonemine, Inc. ("Applicant"), a Delaware corporation and the owner of U.S. Trademark Application No. 78/636,498, does hereby answer the Notice of Opposition filed by eBay Inc., as follows:

I. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 1 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.

- 2. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 2 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 3. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 3 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 4. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 4 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 5. Applicant accepts the listing in Exhibit C to Opposer's Notice of Opposition, but lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations regarding the registrations as set forth in Paragraph 5 of the Notice of Opposition.
- 6. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 6 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 7. Applicant accepts the information listing of eBay's registrations and applications set forth in Paragraph 7 of the Notice of Opposition, but lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 7 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.

- 8. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 8 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 9. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 9 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 10. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 10 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 11. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 11 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 12. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 12 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 13. Applicant admits the allegations set forth in Paragraph 13 of the Notice of Opposition.
- 14. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 14 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.

- 15. Applicant denies each and every allegation set forth in Paragraph 15 of the Notice of Opposition.
- 16. Applicant denies each and every allegation set forth in Paragraph 16 of the Notice of Opposition.
- 17. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 17 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 18. Applicant incorporates by reference answers to paragraph 1 through 17, inclusive, as if fully set for here.
- 19. Applicant denies each and every allegation set forth in Paragraph 19 of the Notice of Opposition.
- 20. Applicant denies the allegation set forth in the first sentence in Paragraph 20 of the Notice of Opposition. Applicant admits the allegation set for in the second sentence in Paragraph 20 of the Notice of Opposition. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in the last sentence of Paragraph 20 of the Notice of Opposition.
- 21. Applicant denies every allegation set forth in Paragraph 21 of the Notice of Opposition.
- 22. Applicant denies the allegations set forth in Paragraph 22 of the Notice of Opposition.

- 23. Applicant denies the allegations set forth in Paragraph 23 of the Notice of Opposition.
- 24. Applicant incorporates by reference answers to paragraph 1 through 24, inclusive, as if fully set for here.
- 25. Applicant admits the allegation set forth in Paragraph 25 of the Notice of Opposition.
- 26. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 26 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 27. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 27 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 28. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 28 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 29. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 29 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.

- 30. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 30 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 31. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 30 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 32. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 30 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 33. Applicant lacks sufficient knowledge and information upon which to formulate a belief as to the truth or falsity of the allegations set forth in Paragraph 30 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 34. Applicant denies the allegations set forth in Paragraph 34 of the Notice of Opposition, and therefore denies each and every allegation set forth therein.
- 35. Applicant denies the allegations set forth in Paragraph 35 of the Notice of Opposition.

36. Applicant does not believe that eBay will be damaged by registration of the **FONEBAY** mark, and therefore, Applicant respectfully requests a decision by the Trademark Trial and Appeal Board in its favor that Opposition No. 91172816 filed against it be denied.

Respectfully submitted,

By:

David H. Jaffer/

PILLSBURY WINTPHROP SHAW PITTMAN LLP

Intellectual Property Group

P.O. Box 10500

McLean, VA 22102

Telephone: (650) 233-4510 Facsimile: (703) 770-7901

Email: david.jaffer@pillsburylaw.com

CERTIFICATE OF TRANSMISSION

I hereby certify that the foregoing Answer to Notice of Opposition is being transmitted to the Trademark Trial and Appeals Board via the Electronic System for Trademark Trials and Appeals on the date indicated below:

Date: October 26, 2006

y: — / 1 1 1

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Notice of Opposition was sent to counsel for Opposer by United States Postal Service as First Class mail in an envelope addressed as follows on the date indicated below:

Kristin K. Manley COOLEY GODWARD LLP 101 California Street, 5th Floor San Francisco, California 94111

Date: October 26, 2006

Diana Darain





United States Patent and Trademark Office

Home | Site Index | Search | Guides | Contacts | eBusiness | eBiz alerts | News | Help



TTABVUE. Trademark Trial and Appeal Board Inquiry System

Opposition

Number: 91172816

Filing Date: 09/11/2006

Status: Pending

Status Date: 09/11/2006

Interlocutory Attorney: DAVID M MERMELSTEIN

Defendant

Name: fonemine, Inc.

Correspondence: DAVID H. JAFFER

PILLSBURY WINTHROP SHAW PITTMAN LLP

P.O. BOX 10500 MCLEAN, VA 22102

Serial #: 78636498

Application Status: Opposition Pending

Mark: FONEBAY

Plaintiff

Name: eBay Inc.

Correspondence: Kristin K. Manley

Cooley Godward LLP

101 California Street, 5th Floor San Francisco, CA 94111-5800

trademarks@cooley.com, kmanley@cooley.com, jrosenthal@cooley.com

Prosecution History

#	Date	History Text	Due Date	
4	10/26/2006	ANSWER		
3	09/11/2006	PENDING, INSTITUTED		
2	09/11/2006	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	10/21/2006	
1	09/11/2006	FILED AND FEE	,,	
Results as of 11/16/2006 03:12 PM Back to search results Search:				

| .HOME | INDEX | SEARCH | eBUSINESS | CONTACT US | PRIVACY STATEMENT